

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/3392/2013  
MOTION NO:2078/2021**

**BETWEEN:**

- 1. RINGARDAS NIGERIA LIMITED**
- 2. EDDY VAN DEN-BROEKE.....CLAIMANTS/APPLICANTS**

**VS**

- 1. LUBCON NIGERIA LIMITED**
- 2. BARR. BERNARD AFU.....DEFENDANTS/RESPONDENTS**

**RULING**

By a Motion on Notice dated 1/3/2021 and filed same day with Motion No. M/2078/2021, brought pursuant to Order 25, Rules 1, 2, 3 and 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court. The Claimants/Applicants prays the court the following reliefs;

- (1) An Order granting leave to the Claimants/Applicants to further amend their Statement of Claim and Witness Statement on Oath.

(2) And the Omnibus relief.

The application is supported by an Eight (8) Paragraph affidavit deposed to by one S.Q Agbor a Legal Practitioner in the law firm of Applicants' Counsel. Filed along is a Written Address in compliance with the Rules of Court and adopts same in, urging the court to grant their prayers.

Opposing the Motion, 2<sup>nd</sup> Defendant/Respondent filed a Twenty One (21) Paragraph Counter-Affidavit on 24/1/2022, deposed to by one Patience Victor, a Secretary in the law firm of 2<sup>nd</sup> Defendant/Respondent's counsel also filed a Written Address and adopts same, in urging the court to refuse the application.

1<sup>st</sup> Defendant/Respondent is not opposed to the application.

In their Written Address, Claimants/Applicants' counsel formulated a sole issue for determination which is;

“Whether this Honourable Court can exercise its discretion to grant the Motion for leave to further amend the Plaintiff's Statement of Claim and Witness Statement on Oath in favour of the Applicants?

Submits that amendment can be made on Originating Processes at any time in the course of a Suit as long as such amendment is sought in good faith, the court can exercise its discretionary powers to allow amendment at any stage of proceedings, provided the adverse party will not be surprised or prejudiced and the justice of the case is not subverted. Refer to Eleki Vs Oko (1995) 5 NWLR (PT. 393) 100 @ 109, Order 25 Rules 1, 2, 3, 4 of the Rules of Court.

Submits further that the Applicants have placed sufficient facts to enable court exercise its discretion in their favour stating that the purpose of the amendment is to assist the court to discover the real issues in controversy between the parties in the suit. Refer to *University of Ilorin Vs Adesina* (No.2) (2008) ALL FWLR (PT.400) 768 @ 775 – 776 and FWLR (PT.400) 768 @ 775 – 776 and Section 6 (6) (a) of the Constitution of the Federal Republic of Nigeria 1999.

Finally, urge court to grant the reliefs as are such that can be granted in the circumstance.

In their Written Address, 2<sup>nd</sup> Defendant/Respondent's counsel formulated three (3) issues for determination that is;

- (1) Whether from the circumstances of this case. The Plaintiff have placed before this Honourable Court sufficient grounds to warrant the granting of further amendment of pleadings in this case.
- (2) Whether the amendment being sought by the Plaintiffs will not change or alter the Plaintiff's case against the 2<sup>nd</sup> Defendant.
- (3) Whether the Plaintiff's Motion does not constitute an abuse of court process.

Arguing the issues one and two above submits that the grounds for the application for further amendment does not fall within those ground contemplated by Order 25 Rule 1, 2, 3, 4 of the Rules of Court. Applicants merely seek to further amend their Originating Process to the taste and style of their counsel.

Submits further that, that the amendment sought will alter the nature and character of the case of the Plaintiffs or Defendant. Refer to C.G.G (Nig) Ltd Vs Idorenyin (2015) 13 NWLR (PT. 1475) 165 Para B – G. Submits that the Applicant have not placed relevant facts to enable court exercise its discretion judicially and judiciously. Refer to Buhari Vs Obasanjo (2003) 17 NWLR (PT. 850) 587 @ 660.

On issue three, that is; whether the Plaintiffs' Motion does not constitute an abuse of court process relying on the authorities of Amaefule Vs State (1988) 2 NWLR (PT. 75) @ 177, Ojo Vs A.G. Oyo State (2008) 15 NWLR (PT. 1110) 309 @ 323 Paragraph E – H, Saraki Vs Kotoye (1992) 9 NWLR (PT. 264) 156; CBN Vs Ahmed (2001) 11 NWLR (PT.724); Arubo Vs Aiyelero (1993) 8 NWLR (PT. 280) 126 @ 369 327 -328 urge court to hold that the application is tantamount to an accommodation of abuse of court process therefore the application ought to be struck out.

Having carefully considered the affidavit evidence, the submission of both counsel for and against the grant of the reliefs sought by the Applicants as well as the judicial authorities cited the court finds that only (1) issue calls for determination that is;

“Whether the Claimants/Applicants have made out a ground so as to be entitled to the relief sought”

The grant or otherwise of an application of this nature falls within the discretion of court which the court is enjoined to exercise judicially and judiciously. See NDIC Vs Glodus Ent Ltd (2011) 3 NWLR (PT.123) 74 @

84. The principles which guides the court whether or not to grant the prayers of the Applicants was set out in the case of *Adekanye Vs Grand Services Ltd* (2007) ALL FWLR (PT. 387) 855 @ 857Ratio 1 and they include;

- (a) The court must consider the materiality of the amendment sought and will not allow an inconsistent or useless amendment.
- (b) Where the amendment would enable the court to decide the real matter in controversy and without controversy.
- (c) Where the amendment relates to a mere misnomer, it will be granted almost as a matter of course.
- (d) The court will not grant an amendment where it will create a suit where non-existed.
- (e) The court will not grant an amendment to change the nature of the claims before the court.
- (f) Leave to amend will not be granted if the amendment would not cure the defect in the proceedings.
- (g) An amendment would be allowed if such an amendment will prevent injustice.

In the instant case, Applicants states in Paragraph 4 and 5 of their supporting affidavit the grounds for this application, which is to amend the suit to taste and style of the new counsel in the matter and for the overall

interest of justice as well as to streamline the claims of the Applicants. On the other hand, 2<sup>nd</sup> Defendant/Respondent in opposing this application states in Paragraph 16 of his Counter-Affidavit that there is no error in the case of Applicants to warrants a further amendment. It is the observation of the court that 13, 14, 15, 17, 18, 19, 20 of the said Counter-Affidavit is fraught with extraneous matters, objections prayers legal argument and conclusion, contrary to the Provisions of Section 115 (2) of the Evidence Act and hereby struck out.

I have taken a considered look at the competing claims of the parties, the attached proposed further amendment as well as the amended Statement of Claim of the Claimants/Applicants this amendment sought, in my view, is in line the guideline stated above as there is nothing imposing on a new counsel to stick with pleadings settled by an erstwhile counsel in the matter. To refuse the application would be tantamount to denying the new counsel opportunity to conduct the case in the way and manner he deems fit, this is especially as the amendment sought, in my view, has not changed substantially the character of the case.

From all of these, the issue is resolved in favour of the Claimants/Applicants as the court is not swayed to see the application as an abuse of court process and having showing sufficient ground to warrant the grant of the application. This application for amendment should succeed as I find it not overreaching or capable of occasioning injustice on the Defendants/Respondents as he has the liberty to react to the amendment. Accordingly, the application is allowed as prayed. It is hereby ordered as follows;

- (1) Leave of court is granted to the Claimants/Applicants to further amend their statement of claim and Witness Statement on Oath.
- (2) The Defendants/Respondents are at liberty to react to the Further Amended Statement of Claim served on them within the time permitted by the Rules of court.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

25/4/2022

**APPEARANCE:**

CHIKA ODOEMENA WITH S.Q. AGBOR AND S.O. EKENKE FOR THE CLAIMANTS/APPLICANTS

OLATUNDE RUNSEWE WITH AYONFE OLOWONEHE FOR THE 1<sup>ST</sup> DEFENDANT

BERNARD AFU FOR THE 2<sup>ND</sup> DEFENDANT